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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 COLEEN GUERIN,

11 Plaintiff,

12 v.

13 SMART CITY NETWORKS, LIMITED
14 PARTNERSHIP,

15 Defendant.

Case No. 2:05-cv-0587-LDG (PAL)

ORDER

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17 The plaintiff, Coleen Guerin, brings two causes of action against the defendant,
18 Smart City Networks, Limited Partnership (Smart City), her former employer. In the first,
19 Guerin alleges that Smart City violated 29 U.S.C. §2615, the Family and Medical Leave Act
20 (FMLA), by interfering with her requests for FMLA leave in March 2003 and September
21 2004. In the second, Guerin alleges that Smart City intentionally inflicted emotional
22 distress upon her through her supervisor's conduct in harassing and humiliating her. Smart
23 City moves for summary judgment (#62), which Guerin opposes (#68).

Motion for Summary Judgment

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25 In considering a motion for summary judgment, the court performs "the threshold
26 inquiry of determining whether there is the need for a trial—whether, in other words, there

1 are any genuine factual issues that properly can be resolved only by a finder of fact
2 because they may reasonably be resolved in favor of either party." *Anderson v. Liberty*
3 *Lobby, Inc.*, 477 U.S. 242, 250 (1986). To succeed on a motion for summary judgment,
4 the moving party must show (1) the lack of a genuine issue of any material fact, and (2)
5 that the court may grant judgment as a matter of law. Fed. R. Civ. Pro. 56(c); *Celotex*
6 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

7 A material fact is one required to prove a basic element of a claim. *Anderson*, 477
8 U.S. at 248. The failure to show a fact essential to one element, however, "necessarily
9 renders all other facts immaterial." *Celotex*, 477 U.S. at 323.

10 "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after
11 adequate time for discovery and upon motion, against a party who fails to make a showing
12 sufficient to establish the existence of an element essential to that party's case, and on
13 which that party will bear the burden of proof at trial." *Id.* "Of course, a party seeking
14 summary judgment always bears the initial responsibility of informing the district court of
15 the basis for its motion, and identifying those portions of 'the pleadings, depositions,
16 answers to interrogatories, and admissions on file, together with the affidavits, if any,' which
17 it believes demonstrate the absence of a genuine issue of material fact." *Celotex*, 477 U.S.
18 at 323. As such, when the non-moving party bears the initial burden of proving, at trial, the
19 claim or defense that the motion for summary judgment places in issue, the moving party
20 can meet its initial burden on summary judgment "by 'showing'—that is, pointing out to the
21 district court—that there is an absence of evidence to support the nonmoving party's case."
22 *Celotex*, 477 U.S. at 325. Conversely, when the burden of proof at trial rests on the party
23 moving for summary judgment, then in moving for summary judgment the party must
24 establish each element of its case.

25 Once the moving party meets its initial burden on summary judgment, the non-
26 moving party must submit facts showing a genuine issue of material fact. Fed. R. Civ. Pro.

1 56(e). As summary judgment allows a court "to isolate and dispose of factually
2 unsupported claims or defenses," *Celotex*, 477 U.S. at 323-24, the court construes the
3 evidence before it "in the light most favorable to the opposing party." *Adickes v. S. H.*
4 *Kress & Co.*, 398 U.S. 144, 157 (1970). The allegations or denials of a pleading, however,
5 will not defeat a well-founded motion. Fed. R. Civ. Pro. 56(e); *Matsushita Elec. Indus. Co.*
6 *v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

7 Smart City first argues that Guerin cannot maintain her FMLA claim because there is
8 no evidence that she requested FMLA leave in either March 2003 or October 2004. Smart
9 City relies solely on its lack of FMLA paperwork to support its argument. Neither party
10 disputes, however, that Smart City provided Guerin with leave beginning in May 2003 so
11 that Guerin could have bladder surgery. Smart City also provided Guerin with leave
12 beginning in October 2004 to care for her husband following his surgery. These facts
13 permit an inference that Guerin requested leave.

14 Smart City argues that Guerin cannot maintain a claim that it denied or interfered
15 with any request Guerin made for FMLA leave because it is undisputed that Guerin was
16 granted the leave. The court finds, however, that whether Smart City interfered with
17 Guerin's FMLA leave rights is an issue of fact. Though Guerin's opposition is not a model
18 of clarity, it is sufficient to raise an issue of fact whether her resignation in November 2004
19 was caused by her supervisor's harassment, both at work and at home, for taking FMLA
20 leave. Accordingly, summary judgment is not appropriate as to Guerin's FMLA claim.

21 In seeking summary judgment as to Guerin's claim for intentional infliction of
22 emotional distress, Smart City argues that Guerin cannot show that its conduct was
23 extreme and outrageous, that it either intentionally or recklessly caused that emotional
24 distress, or that its conduct actually or proximately caused Guerin's suffering. Smart City
25 first argues, however, that Guerin may not rely upon events occurring more than two years
26 prior to the filing of her complaint to establish a triable issue of fact in this tort claim. Within

1 Nevada, tort claims must be brought within two years. See, Nev.Rev.Stat. §11.190(4).
2 The court agrees that Guerin is limited to seeking damages only for that conduct within the
3 two-year statute of limitations preceding the filing of her complaint. The court disagrees,
4 however, that the two-year statute of limitations precludes this court from considering
5 events occurring prior to the two-year period as evidence relative to Smart City's actions
6 within the limitations period. Such pre-limitations conduct may be considered, *inter alia*, as
7 context for events within the limitations period.

8 The court disagrees with Smart City that Guerin has not raised a triable issue of fact
9 whether its conduct was extreme and outrageous. As described by the Nevada Supreme
10 Court, extreme and outrageous conduct is "outside all possible bounds of decency" and
11 "utterly intolerable in a civilized community." Having considered the described conduct of
12 Bonnie Dolly toward Guerin, this court cannot agree that, as a matter of law, it is not
13 outside all possible bounds of decency. That is a question for the jury to decide. Given
14 Dolly's alleged conduct, Guerin has readily met her burden of raising an issue of fact
15 whether Dolly intended to cause emotional distress. Finally, Guerin's resignation letter
16 raises an issue of fact whether Dolly's conduct was a cause of her emotional distress.
17 Accordingly, summary judgment is inappropriate as to Guerin's claim for intentional
18 infliction of emotional distress.

19 THE COURT **ORDERS** that Defendant's Motion for Summary Judgment (#62) is
20 DENIED.

21 DATED this 21 day of September, 2007.


22 _____
23 Lloyd D. George
24 United States District Judge
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